

REMARKS

This is in response to the Office Action of June 15, 2009. Claim 1 is amended based upon such disclosure as that in lines 18-22 on page 8 of the specification (“Specific examples of the fat or oil containing the polyvalent unsaturated fatty acid component include, for instance, fats and oils contained in fish such as tuna, yellowtail, mackerel, eel, sardine, horse mackerel, mackerel pike, and Pacific herring”). No new matter is introduced by this Amendment. With this Amendment, claims 1-4 remain pending in the application.

Rejection over prior art

Claims 1-4 had been rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,193,986 B1 (Sakurada) in view of US 4,379,755 (Yamada) and WO 01/58279 (Takahashi).

Sakurada discloses a water-in-oil emulsion. See column 2, line 37; column 7, lines 32-42 (“mixing the aqueous phase with an oil phase ... to finally obtain a W/O-type emulsion”); and Sakurada claim 11. The Sakurada water-in-oil emulsions are distinct from the oil-in-water emulsions of the present invention. As the Examiner recognizes, Sakurada fails to teach or suggest an oil-in-water emulsion.

The oil-free gelatinizing agent of Yamada contains (a) hydrophilic sucrose fatty acid ester and (b) hydrophilic liquid polyhydric alcohol. In contrast, the sucrose acetate isobutyrate employed in the present invention is lipophilic, not hydrophilic. In lines 37-41 of column 1, Yamada refers to disadvantages such as non-homogeneity and poor feel arising from the use of lipophilic sucrose esters. The Yamada teaching of using hydrophilic sucrose fatty acid esters teaches away from the use of lipophilic sucrose esters as in the present invention.

Neither Sakurada nor Yamada teaches or suggests sucrose acetate isobutyrate as an emulsifying agent. The Examiner had alleged that Takahashi discloses that sucrose acetate isobutyrate is an equivalent emulsifying agent to the sucrose fatty acid esters taught by Sakurada, citing paragraph [0029] of Sakurada. Applicants respectfully disagree. Takahashi merely lists many different types of emulsifiers that can be used as alternatives or in combination *in the Takahashi technology*. The Takahashi reference teaches nothing at all about equivalence of

emulsifiers *in the Ishikawa technology* (that is, Applicants' technology).

It had been demonstrated – in the 'Declaration under 37 CFR 1.132' of Makoto Ishikawa filed with the Amendment of January 31, 2008 – that the use of sucrose acetate isobutyrate as required by all of Applicants' claims provides ***unexpected beneficial results***. At the top of page 8 of the Examiner's Answer, the Examiner contended that the data presented was insufficient to show unexpected results, in that only a small sample of people, of unknown qualification, was used and that the raw results of the tests were not reported.

Applicants present herewith a new 'Declaration under 37 CFR 1.132' of Makoto Ishikawa, which clarifies the matters presented in the previous Rule 132 Declaration filed on January 31, 2008, and which responds to the issues raised by the Examiner with regard to the alleged insufficiencies of the previous Declaration.

Applicants respectfully submit that, based upon the current record – which includes two Declarations under 37 CFR 1.132 of Makoto Ishikawa – the rejection of claims 1-4 over the Sakurada and Yamada and Takahashi disclosures is not sustainable.

Conclusion

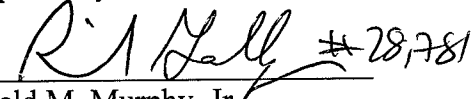
If there are any questions concerning the present application, the Examiner is respectfully requested to contact Richard Gallagher (Registration No. 28,781) at (703) 205-8008.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: July 9, 2009

GMM/RG

Respectfully submitted,

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